THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.4841 OF 2007

Between:

Narayani Carriers & Contractors Private Limited, represented by its Managing Director K.A.Patro, Visakhapatnam.

.....Petitioner

Vs.

1) The Chairman & Managing Director of Visakhapatnam Steel Plant (VSP), Rashtripa Ispat Nigam Limited, Administrative Buildings, Visakhapatnam-31.
2) The General Manager (Project Contracts) Rashtriya Ispat Nigam Limited, Visakhapatnam
3) MECON Limited, Ranchi, represented by its Deputy General Manager, Site Office, Visakhapatnam.

.....Respondents.

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O R D E R:

By proceedings, dated 22.01.2006 of the first respondent under the signature of the second respondent, in exercise of the authority of Clause 14.1 of the General Conditions of Contract read with Clause No.13.8 and 2.5 of the special conditions of contract, the respondents intimated the petitioner to withdraw the un-executed portion of the work and that action in terms of the contract would be taken to get the work executed and completed through any other agencies at the petitioner's risk and cost, without any further reference to the petitioner. The proceedings also state that without prejudice to the contractual rights and remedies of the respondents, they reserve the right to recover any additional amount, which may be incurred by the respondents in the execution and completion of the withdrawn work according to Clause 14.3 of General Conditions of Contract.

The first respondent awarded the petitioner the work of "Erection of Technical Structures, Castings, Piping, Plant No.4 Proper & Chimney" at Visakhapatnam Steel Plant. An agreement for that purpose was entered into on 19.10.2005. According to the petitioner, the execution involved fulfillment of reciprocal obligations, supply of refractory bricks and other material by the Visakhapatnam Steel plant under the supervision of third respondent-consultant. On account of default in the fulfillment of such reciprocal obligations by the first respondent, the petitioner could not execute the work within the time schedule. According to the petitioner, the contract or part of it could not

be rescinded by the first respondent, unless the contractor had failed to fulfil his part of the obligations under the terms of the contract. Further, according to the petitioner, the present un-lawful action was taken by the respondents for no fault of the petitioner and the delay in execution was caused solely on account of the failure by the first respondent in fulfilling its part of the obligations under the contract.

The contract between the parties is a non-statutory contract and the grievance of the petitioner is not a threshold grievance i.e., at the time of entering into the contract. The grievance is a contractual grievance pertaining to the alleged mal-performance by the petitioner, which the petitioner alleges is occasioned by the failure of the respondents. Such disputes involve contestable factual positions, and integrally involved interpretation of the terms of the contract and identification of the reciprocal obligations of the parties under the said contract. There are more appropriately adjudicated either before the Arbitrator or before a civil court of competent jurisdiction, rather than in a public law proceedings under Article 226 of the Constitution. It is not as though this court does not have the jurisdiction to adjudicate such disputes, where the State is a party.

The question, however, is whether this court should exercise its discretion to entertain such disputes in the context of the availability of an alternative, speedy and efficacious remedy to the petitioner, an issue of court management as well.

The respondent states that there is an arbitration clause in the contract and the disputes such as are presented in this writ petition could be the subject matter of resolution under an arbitrary process, a speedy remedy compared to the dilatory process of adjudication by a civil court.

In the circumstances and on the aforesaid analysis, this court is not inclined to exercise its discretion to entertain the grievance of the petitioner in this writ petition.

The writ petition is accordingly dismissed. The petitioner is relegated to pursue his remedies before the arbitral forum or before a competent civil court as the case may be. The appropriate forum shall consider the petitioner's claims as and when they are lodged in accordance with law and on the basis of the material available on record before such a forum. No order as to costs.

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GODA RAGHURAM J.,

Dt.09.03.2007
tjs